IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

EDWARD JACOB LUECKENBACH II **PLAINTIFF**

v. **CIVIL ACTION NO.: 1:16-cv-00189-SA-DAS**

HORIZON MISSISSIPPI PUBLICATIONS, INC.
d/b/a STARKVILLE DAILY NEWS **DEFENDANTS**

ANSWER AND DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendant, Horizon Mississippi Publications, Inc. doing business as Starkville Daily News files this Answer And Defenses in response to Plaintiff's First Amended Complaint [2] as follows:

DEFENSES

FIRST DEFENSE

Truth is a complete defense to an action for defamation. *Blake v. Gannett Co., Inc.*, 529 So. 2d 595, 602 (Miss. 1988). Plaintiff was, in fact, arrested for public profanity or drunkenness as reported by the Starkville Daily News. Accordingly, Plaintiff has failed to state a claim for defamation, and that claim should be dismissed with prejudice.

SECOND DEFENSE

This lawsuit is based on a statement made by the Starkville Daily News in a report titled "Starkville Police Department Blotter" published over six years ago that also appears on the newspaper's web site. Plaintiff's claim is barred by the single publication rule and the 1-year statute of limitations for defamation actions, Mississippi Code § 15-1-35 (2016). *Lane v. Strang Publications Inc.*, 297 F. Supp. 2d 897, 899-900 (N.D. Miss. 2003).

THIRD DEFENSE—ANSWER

General Statement

Horizon repeats the headings and subheadings of the First Amended Complaint for purposes of organization and reference only. No response is required to the First Amended Complaint's headings and subheadings. In the alternative, to the extent such a response is required, those allegations are denied.

For its answer to the allegations of the First Amended Complaint, paragraph by paragraph, Horizon states as follows:

PARTIES AND JURISDICTION

1. Based on information and belief Horizon admits that Plaintiff is a resident citizen of Washington County, Mississippi.

2. Horizon admits that it is organized under the laws of Delaware and that it operates the *Starkville Daily News*, a daily newspaper, in Starkville, Oktibbeha County, Mississippi. Horizon further admits that Corporation Service Company is its registered agent for service or process in Mississippi.

3. Horizon admits that jurisdiction and venue are proper in the United States District Court for the Northern District of Mississippi, Aberdeen Division. Horizon denies that either jurisdiction or venue is proper in the Chancery Court of Oktibbeha County, Mississippi.

FACTS

4. Horizon admits Plaintiff's attorney sent a letter, dated April 22, 2016, requesting that the report of the arrest of Plaintiff be removed from the *Starkville Daily News* website. Horizon denies Plaintiff's legal conclusion that the publication was defamatory. Horizon admits that, based on an official record received from the Starkville Police Department, the *Starkville*

Daily News published a report titled "Starkville Police Department Blotter" and within this report Edward Jacob Lueckenbach was listed as being arrested on September 29, 2010, for "public profanity or drunkenness."

5. Horizon admits Plaintiff's attorney sent another letter, dated July 25, 2016, after not getting a response from Horizon.

6. Horizon denies that the publication in issue is actionable under the laws of the State of Mississippi.

7. Horizon admits that the publication about the contents of the police blotter, which is based on an official record received from the Starkville Police Department, is available on the internet, but it denies that said publication is actionable under the laws of the State of Mississippi.

COUNT I: INJUNCTIVE RELIEF

8. Horizon re-alleges and incorporates the answers in each of the preceding paragraphs.

9. Denied.

10. Denied.

11. Denied.

COUNT II: DEFAMATION

12. Horizon re-alleges and incorporates the answers in each of the preceding paragraphs.

13. Denied as stated. The statement at issue is not false or defamatory.

14. Denied as stated. The statement at issue is not false or defamatory.

15. Denied.

16. Horizon denies the allegations in the unnumbered paragraph beginning "WHEREFORE, PREMISES CONSIDERED" including all subparts (a) through (d) and any and all other allegations not specifically admitted herein. Horizon specifically denies that Plaintiff is entitled to recover any amount whatsoever.

FOURTH DEFENSE

A copy of the article titled "Starkville Police Department Blotter" that is the subject of this lawsuit is attached as Exhibit "A." A screenshot of the online version of the article titled "Starkville Police Department Blotter" is attached as Exhibit "B." The statements in issue are true and, therefore, are non-actionable and fully protected under the First and Fourteenth Amendments to the United States Constitution and Section 13 of the Mississippi Constitution of 1890.

FIFTH DEFENSE

The subject matter of the Starkville Police Department Blotter is a matter of legitimate public interest to which the constitutional or actual malice standard of *Time, Inc. v. Hill*, 385 US 374 (1967), applies or, in the alternative, a standard of care greater than that of negligence should apply because the subject matter is privileged under the First Amendment.

SIXTH DEFENSE

The subject lawsuit is an unconstitutional interference with the editorial process related to the article pursuant to the First and Fourteenth Amendments to the United States Constitution and Section 13 of the Mississippi Constitution of 1890.

SEVENTH DEFENSE

The allegedly defamatory statements published in the Starkville Daily News article and on its web site are based on an official record received from the Starkville Police Department, and therefore, the publication is protected by the official records privilege and is non-actionable under the laws of Mississippi. *Hegwood v. Community First Holdings, Inc.*, 546 F. Supp. 2d 363 (S.D. Miss. 2008).

EIGHTH DEFENSE

The allegedly defamatory statements published in the subject newspaper article and web site posting are based on an official record received from the Starkville Police Department, and therefore, the publication is non-actionable under the First and Fourteenth Amendments to the United States Constitution.

NINTH DEFENSE

There is no duty to remove the information from the paper's web site because there is no duty to retract allegedly defamatory statements under state law, *Hegwood v. Community First Holdings, Inc.*, 546 F. Supp. 2d 363 (S.D. Miss. 2008), and the imposition of such a duty would be a content-based restriction, *RAV v. City of St. Paul*, 112 S. Ct. 2538 (1992), that would violate the First Amendment and its ban against compelled speech, *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241 (1974), and prior restraints, *Near v. Minnesota*, 283 U.S. 697 (1931).

TENTH DEFENSE

The First Amended Complaint fails to state a claim for relief under the expungement statutes enacted by the State Legislature.

ELEVENTH DEFENSE

The imposition of punitive damages under the circumstances of this case would have a chilling effect upon freedom of expression on issues of legitimate public interest, and therefore, such damages are unconstitutional under the First and Fourteenth Amendments to the United States Constitution.

TWELFTH DEFENSE

The imposition of punitive damages under the circumstances of this case would have a chilling effect upon freedom of expression on issues of legitimate public interest, and therefore, such damages are unconstitutional under Sections 13 & 14 of the Mississippi Constitution of 1890.

THIRTEENTH DEFENSE

While denying Plaintiff is entitled to recover damages of any kind from Horizon, Plaintiff's claim for non-economic damages is subject to the maximum limit provided in Miss. Code Ann. § 11-1-60 and/or any other Tort Reform Legislation or caps on damages as provided by Mississippi Law.

FOURTEENTH DEFENSE

Alternatively, Horizon invokes all rights and remedies to which it is or may be entitled to pursuant to Miss. Code. Ann. § 11-1-65, including but not limited to Plaintiff's burden of proving her entitlement to punitive damages by clear and convincing evidence and Horizon's right to a bifurcated trial on the issues of punitive damages. Horizon further invokes all standards and/or limitations regarding the determination and enforceability of punitive damage awards as stated in *BMW of North America v. Gore*, 517 U.S. 559 (1996), and its progeny, including *State Farm v. Campbell*, 538 U.S. 408 (2003).

WHEREFORE, having fully answered the allegations of the Complaint, Defendant Horizon Mississippi Publications, Inc., requests that this Court dismiss the First Amended Complaint with prejudice, at Plaintiff's cost, with a judgment entered in favor of Defendant and against Plaintiff, and for any such other general or special relief as may be appropriate.

Defendant demands a jury to try this cause.

THIS, the 19th day of October, 2016.

Respectfully submitted,

HORIZON MISSISSIPPI PUBLICATIONS, INC.
d/b/a STARKVILLE DAILY NEWS

By: *s/ John Henegan*

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CERTIFICATE OF SERVICE

I, John Henegan, one of the attorneys for Defendant Horizon Mississippi Publications, Inc. d/b/a Starkville Daily News, do hereby certify that I have this day served a true and correct copy of the foregoing Notice of Removal by electronically filing same with this Court's ECF system, which sent notice to the following counsel of record:

Jay Howard Hurdle, Esq.
Hurdle Law Firm PLLC
100 North Lafayette St. #2
Starkville, MS 39759

Counsel for Plaintiff

SO CERTIFIED, this the 19th day of October, 2016.

s/John Henegan

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